



UNITED STATES PATENT AND TRADEMARK OFFICE

GL
UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/031,261	01/10/2002	Stanley George Bonney	PG3694 USW	5050

23347 7590 08/28/2003

DAVID J LEVY, CORPORATE INTELLECTUAL PROPERTY
GLAXOSMITHKLINE
FIVE MOORE DR., PO BOX 13398
RESEARCH TRIANGLE PARK, NC 27709-3398

EXAMINER

LEWIS, AARON J

ART UNIT	PAPER NUMBER
3761	

DATE MAILED: 08/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	10/031,261	Applicant(s)
Examiner	AARON J. LEWIS	Art Unit 3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 10 January 2002.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-79, 82 and 83 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-79, 82 and 83 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892) 4) Interview Summary (PTO-413) Paper No(s). _____ :
2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) Notice of Informal Patent Application (PTO-152)
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3. 6) Other:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5,7,8,11-13,15,18-20,29,31,32,35-79,82 are rejected under 35 U.S.C. 102(b) as being anticipated by Ekenstam et al. ('958).

As to claim 1, Ekenstam et al. disclose a carrier comprising a sheet (9') having a first portion and a second portion; a retainer (see pocket at col.2, lines 30,31), said retainer comprising a pocket or a hole therein; a fold (15) in said second portion such that the second portion is foldable towards the retainer to form a cover therefor; and a join[t] (see marginal edges at col.2, lines 28-31) between said cover and the retainer.

As to claims 2 and 3, Ekenstam et al. disclose said sheet (9') to be an elongated strip with adhesive applied around the [pocket or] hole.

As to claims 4 and 5, Ekenstam et al. (see figure) disclose a plurality of retainers (see indentations in strip 9') in the first portion, wherein the second portion is foldable (15 and col.2, lines 26-28) towards said plurality of retainers to form a cover therefor; and a join[t] (see marginal edges at col.2, lines 28-31) between said cover and the plurality of retainers, the first portion also being foldable via fold (15) towards the retainer to form a base therefor.

As to claims 7 and 8, Ekenstam et al. disclose a second fold (see fold in strip 9' within slot 6 as it is fed beneath guide member 4) in the second portion to form a pull

release tab that is shaped for ease of grip. That is, the free end of strip 9' as illustrated in the figure has a shape which is fully capable of providing the recited function of being easy to grip by a user.

As to claims 11-13, 15 Ekenstam et al. (see figure) disclose a flexible carrier in multi-unit form comprising a series arrangement of a plurality of carriers connected together and formable from the shape sheet or elongate strip (9').

As to claims 18 and 19, Ekenstam et al. disclose the join[t] is formable by adhesive (col.2, lines 28-31), the joint being peelable to enable peelable access to the retainer.

As to claim 20, the retainer of Ekenstam et al. is shaped for receipt by a holder (1).

As to claims 29 and 31, Ekenstam et al. (see figure) disclose a method of making a carrier comprising forming a retainer, comprising a pocket or hole therein, in a first portion of a sheet or elongate strip (9'); filling said retainer with product (13); folding (15) a second portion of said sheet or elongate strip towards the retainer to form a cover therefor; and forming a join[t] (see marginal edges at col.2, lines 28-31) between said cover and the retainer, the carrier of Ekenstam et al. being made in multi-unit form including successive iterations to form a series arrangement of a plurality of containers.

As to claim 32, Ekenstam et al. (see figure) illustrates a pull release tab in order to enable access to the retainer.

As to claim 82, Ekenstam et al. (see figure) illustrates a retainer within the elongated strip (9') consisting of a pocket (see indentations in strip 9').

As to claims 35-79, Ekenstam et al. disclose a carrier having structural elements (i.e. folded and adhered strips having pockets therebetween) which is fully capable of

providing the recited functions (i.e. intended uses). That is, each of claims 35-79 merely recites an intended use for the carrier defined by claim 1. Since claims 35-79 do not recite nor do they add any structural elements to the carrier as established by claim 1, the prior art to Ekenstam et al. having disclosed the structural elements recited in claim 1 is fully capable of providing the recited functions or intended uses.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 6,9,16,17,21,22,24-28,33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ekenstam et al. ('958) in view of Kallstrand et al. ('505).

The difference between Ekenstam et al. and claim 6 is an inert support.

Kallstrand et al., in a carrier, teaches an inert support (col.2, lines 8-12) in the form of plastic which is laminated onto aluminum foil for bearing product (23) thereon.

While Ekenstam et al. do not expressly disclose the material which is employed to make the strip, it would have been obvious to make the elongated strip of Ekenstam et al. from an inert material including plastic laminated onto aluminum foil because it would have prevented contamination and spoiling of the article being carried as taught by Kallstrand et al..

As to claim 9, Kallstrand et al. teach a second fold (#6 of fig.1) in the second portion to form a pull release tab which is shaped for ease of grip by having a looped end.

As to claims 16 and 17, Kallstrand et al. teach the sheet or elongate strip comprising a laminate of metal foil and organic polymeric material (col.2, lines 8-12).

As to claims 21 and 22, Kallstrand et al. teach dry powder medicament (23) being retained within the carrier.

As to claims 24 and 25, Kallstrand et al. teach an inhalation device comprising a housing (1,2) in combination with a carrier having a holder for receipt of the retainer (3) of the carrier.

As to claim 26, Kallstrand et al. teach the carrier having a pull release tab (6) protruding from the housing (1,2).

As to claims 27 and 28, Kallstrand et al. teach the inhalation device comprising a release mechanism (25) and the pull release tab connects to the release mechanism, the release mechanism being separable from the housing.

As to claim 33, Ekenstam et al. as modified by Kallstrand et al. teach using a carrier for dispensing medicament.

5. Claims 23,34,83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ekenstam et al. in view of Kallstrand et al. as applied to claims 6,9,16,17,21,22,24-28 above, and further in view of Jahnsson ('507).

The difference between Ekenstam et al. as modified by Kallstrand et al. and claim 23 is the medicament selected from the group consisting of albuterol, salmeterol, ipratropium bromide, fluticasone propionate and beclomethasone dipropionate and salts or solvates thereof and any mixtures thereof.

Jahnsson (col.4, lines 17-50), in a carrier for medicament teaches carrying and administration of a variety of medicaments including beclomethasone, fluticasone, salmeterol for the purpose of treating a variety of diseases by inhalation of powdered medicaments.

It would have been obvious to further modify Ekenstam et al. as modified by Kallstrand et al. to employ any one of a variety of powdered medicaments including beclomethasone, fluticasone, salmeterol because it would have enabled a single device to treat a variety of diseases by inhalation of powdered medicaments as taught by Jahnsson.

Claim 34 is substantially equivalent in scope to claim 23 and is included in Ekenstam et al. as further modified by Jahnsson for the reasons set forth above with respect to claim 23.

As to claim 83, Jahnsson teaches and establishes a variety of powdered medicaments for the treatment of a variety of diseases. It would have been obvious to further modify the particular medicament in Jahnsson to include albuterol sulfate as an obvious matter of design choice because it would have enabled the carrier/inhaler of Jahnsson to treat additional disease states which can be addressed with albuterol.

6. Claims 10,14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ekenstam et al. ('958) in view of Levine et al. ('719).

The difference between Ekenstam et al. and claim 10 is at least one perforation in the pull release tab.

Levine et al., in a carrier, teach at least one perforation (2) for the purpose of providing a means for easy detachment and disposal of excess carrier strip material.

It would have been obvious to modify the carrier strip of Ekenstam et al. to include at least one perforation because it would have provided a means for easy detachment and disposal of excess carrier strip material as taught by Levine et al..

As to claim 14, Levine et al. teach points of weakness (2) between each carrier in a series arrangement.

Claim Objections

7. Claim 30 is objected to because of the following informalities: Claim 30 is incomplete. It does not end in a period and appears to be missing words. More specifically, claim 30 appears at the bottom of page 18 of the instant specification as follows: "A method according to claim 29 comprising forming a plurality of retainers in a said portion of said sheet or elongate strip; filling said plurality of". Appropriate correction is required.

Specification

8. The disclosure is objected to because of the following informalities: Claims 31-39 are not present in the specification as originally filed. Claims 32-34,37 and 38 have been examined based upon their presentation in the amendment received 10/21/2001; however, claims 31,35,36 and 39 have not been examined because they are not presented.

Appropriate correction is required.

9. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 32-34,37 and 38 have been renumbered 31-35 and claims 40-87 have been renumbered as claims 36-83. Claims 32-34,37,38,40-87 have been examined as renumbered. **Conclusion**

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of the art is cited to show relevant carriers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON J. LEWIS whose telephone number is (703) 308-0716. The examiner can normally be reached on 9:30AM-6:00PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, WEILUN LO can be reached on (703) 308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



AARON J. LEWIS
Primary Examiner
Art Unit 3761

Aaron J. Lewis

Application/Control Number: 10/031,261
Art Unit: 3761

Page 9

August 24, 2003